

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 1602 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

NARENDRAKUMAR BHIMARAJ LODHA

Versus

DISTRICT SUPDT.OF POLICE

Appearance:

MR RR MARSHALL for Petitioner
NOTICE SERVED BY DS for Respondent No. 1
MR PT PATEL for Respondent No. 3
PUBLIC PROSECUTOR for Respondent No. 4

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 31/03/98

ORAL JUDGEMENT

1. Heard Ld.Advocate Mr.R.R.Marshal appearing for petitioner. Ld.APP--Ms.B.R.Gajjar has appeared in response to the notice issued earlier on behalf of respondent Nos 1,2&4. Mr.P.D.Patel appeared on behalf of respondent No.3 in response to the notice issued under

earlier order.

2. Rule. Ld.APP as well as Mr.P.D.Patel waive service on behalf of respective respondents.

3. The petitioner has approached to this court with a prayer to direct the respondent No.1-Dist.Suptd.of Police to handover the investigation of criminal case No.61/97 referred to by the court of JMFC, Surat to anyother competent investigating officer other than respondent No.2.

4. The petitioner claims to be a registered owner of a trade mark used in Silk sarees in the form of word "Vardhaman". The petitioner has received information that spurious goods being circulated in the market with "Vardhaman" trade mark in a colorable imitation by some merchants. After making some enquiry the petitioner having come to know that the respondent No.3 is using the mark "Vardhaman" on his goods and it is being sold in his shop by using sign board in the name of "Vardhaman". The petitioner having been satisfied that such an act and action on the part of respondent No.3 amounts to criminal offence under sections 78 & 79 of Trade & Merchandise Marks Act, 1958 (hereinafter referred to as "the Act") and also offence under section 63 of Copyright Act has filed criminal complaint in the court of Ld.JMFC, Surat. That vide order dated 22.6.97 the said complaint was sent for investigation under section 156(3) of Cr.P.C. The petitioner has shown apprehension that the respondent No.2 is not properly conducting the investigation of said criminal case and as such the petitioner is not likely to get justice as prayed for and that the respondent No.1 be directed to transfer the investigation from respondent No.2 to anyother competent officer.

5. At the stage of admission urgent notice was issued to the respondents vide earlier order, dated 24.12.97 and as stated hereinabove Ld.APP has appeared on behalf of respondent Nos 1,2 & 4 while Mr.P.D.Patel has appeared on behalf of respondent No.3. The respondent No.1 has filed affidavit-in-reply of one R.D.Marathe, Police Sub Inspector, Salabatpura PS, Surat city which is taken on record. I have carefully gone through the affidavit-in-reply. It appears from the contents that the respondent No.1 as the Head of department and superior officer of the respondent No.2 has not enquired into the complaint made by the present petitioner against the investigation officer. Attempt is being mace on behalf of respondent No.1 to explain the details. It also appears from the affidavit-in-reply that the

investigation officer is not even conversant with the provisions of Trade & Merchandise Marks Act as well as Copy Right Act under which the criminal offences are prescribed vide sections 78, 79 & 63 respectively, and thereby, it is necessary to direct the respondent No.1 to transfer the investigation of criminal case No.61/97 to competent investigation officer under respondent No.1.

6. Mr.P.D.Patel, Ld.advocate appearing for respondent No.3 has referred to and relied upon the observations of the Supreme Court in the case of H.S.Bains vs State (UT of Chandigarh) reported in AIR 1980 SC 1883 and has urged that even if police claims C summary the petitioner can not be said to be remediless as the petitioner can request the Magistrate to enquire into the matter and proceed further in the proceedings of the complaint. That in view of the same this court should not exercise extraordinary powers under Article 226 of the Constitution.

7. Above stated submission made on behalf of respondent no.3 could hardly be accepted in the facts and circumstances of the case. In overall consideration of the facts produced on record in my opinion this is a fit case whereby the respondent No.1 should be directed to withdraw the investigation immediately from the respondent No.2 in respect to the Criminal Case No.61/97 referred to by the court of Ld.JMFC, Surat for investigation under section 156(3) of Cr.P.C., and hence, the respondent No.1. is hereby directed to enquire into the matter and withdraw investigation of criminal case No.61/97 from the present investigation officer and to handover the same to any other competent investigation officer under him so as to make de-novo investigation and to complete the same within a period of four weeks from the date of receipt of certified copy of the order of this court. Rule is made absolute accordingly. No costs.

...